IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Revision No. 116 of 2007.

Judgement reserved on:

Date of decision: 11.10.2007.

Nand Lal ……. Petitioner.

Vs.

Suresh Kumar & ors. …. Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. Shrawan Dogra, Advocate.

For the Respondents : Mr. M.L.Chauhan, Addl. Advocate General, for State-respondent.

Kuldip Singh, Judge (Oral).

The complainant Nand Lal has filed this revision against the judgement, dated 18.5.2007, passed by the learned Judicial Magistrate Ist Class, Court No. 2, Ghumarwin, in case No. 114/2 of 2004, thereby acquitting the respondents, under Sections 451, 427, 504, 506 read with Section 149 of the Indian Penal Code.

2. The prosecution story is that learned Additional Chief Judicial Magistrate directed the police to investigate the case, and such direction was received in the Police Station, Bharari on 19.6.2004. According to complainant Nand Lal respondents formed an unlawful assembly on 15.6.2004 at mid-night with common object

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Whether the reporters of the local papers may be allowed to see the Judgment?

to forcibly occupy the house of the complainant. The respondents entered into the courtyard of the complainant and damaged his stair case. One Smt. Kashmiri Devi informed the complainant regarding the breaking of the stair case. The complainant tried to stop the respondents from committing the offence, but the respondents threatened the complainant to kill him and his family members. They also threatened to put the property of the complainant on fire. The complainant suffered a loss of Rs. 1500/- due to illegal acts of the respondents. An FIR was registered, case was investigated and after completion of the investigation, challan under Sections 451, 427, 504, 506 read with Section 149 of the Indian Penal Code, was put up against the respondents in the court. The respondents were charged to which they pleaded not guilty and claimed trial. The prosecution examined six witnesses. The statements of respondents were recorded, under Section 313 Cr.P.C., and they did not lead any evidence in defence. The learned Judicial Magistrate acquitted the respondents. The State has opted not to file an appeal, therefore, complainant Nand Lal has preferred the present revision.

3. I have heard the learned counsel for the petitioner and perused the record. PW 1 Nand Lal complainant has stated that on 15.6.2004 at 12.00 midnight respondents broke his stairs. They threatened to do away with his life and also abused him. He reported the matter vide complaint Ex. PW 1/A. He did not approach the police directly till 20.6.2004. PW 2 Anant Ram has stated that he repaired stairs of complainant's house about five years ago. His statement was recorded on 17.3.2006. He did not talk to the respondents at the

relevant time. He is in litigation with respondents. PW 3 Vidya Sagar has stated that in the year 2004, Nand Lal had told that his stairs had been broken, he did not tell that the stairs were broken by the respondents Suresh Kumar etc. He did not support the prosecution and was declared hostile.

4. PW 4 Smt. Kashmiri Devi has stated that at about 11.45 p.m. on 15.6.2004, Suresh Kumar and others under the influence of liquor were abusing behind her house. Thereafter they had broken the stairs of Nand Lal. In cross-examination, she has admitted that she had litigation with the respondents. She is not on speaking terms with the respondents for the last 2-3 years. Asha, Ramesh, Dev Raj and Meera were standing there. Respondent Suresh was breaking the stairs and other respondents were standing. She brought Nand Lal on the spot.

5. PW 5 Rajo Devi is not a witness of the occurrence, but in cross examination she has stated that the disputed portion is joint. The cases are going on in between the complainant and the respondents. PW 6 Dugalu Ram, SHO, is the investigating officer. In his cross-examination, he has admitted that adjacent to the stairs the respondents have their land.

6. As per complaint Ex. PW 1/A, the incident allegedly occurred around mid- night, but PW 5 has stated that at about 10.30 p.m. complainant informed her on telephone about the incident. The complainant has deposed that stairs were repaired by him with the help of one Laxman, but that Laxman has not been examined. PW 3 Vidya Sagar has not supported the prosecution story. PW 4 Kashmiri Devi

has stated that occurrence took place at about 12.00 night which is in contradiction to the statement of PW 5 Rajo Devi, who has stated that she received telephonic call at about 10.30 p.m. from complainant about the incident.

7. PW 4 has admitted that she has litigation with the respondents and she is not on speaking terms with them. She has also stated that Asha, Ramesh, Dev Raj and Meera Devi remained standing at the place and respondent Suresh was breaking the stairs. The learned Judicial Magistrate has noticed material contradictions in the statement of the complainant and in his complaint Ex. PW 1/A. The prosecution case is not supported by the independent witness.

8. PW 4 Kashmiri Devi is an interested witness. There are contradictions in the statements of complainant and PW 4 Smt. Kashmiri Devi. It has come on record that the property of the parties is joint. The delay in lodging the FIR/report has not been explained by the complainant. The prosecution has failed to prove the formation of unlawful assembly by the respondents. The State in view of weakness of the prosecution case has opted not to assail the impugned judgement.

9. The learned Judicial Magistrate has taken a possible view from the material on record, hence, the revision petition is dismissed.

October 11, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**